

# MEMORANDUM

August 1, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: NISHIMURA & SAUNDERS LLP  
Matt Saunders, Esq.

BRIAN T. CHU  
Senior Deputy County Counsel  
General Litigation Division

RE: Bodgan Markowicz v. County of Los Angeles, et al.  
Los Angeles Superior Court Case No. MC016129

DATE OF  
INCIDENT: February 22, 2004

AUTHORITY  
REQUESTED: \$125,750

COUNTY  
DEPARTMENT: Department of Public Works

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## CLAIMS BOARD ACTION:

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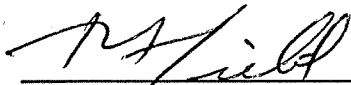
Approve

☐

Disapprove

☒

Recommend to Board of  
Supervisors for Approval



ROCKY A. ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on September 5, 2006

## SUMMARY

This is a recommendation to settle for \$125,750 the lawsuit brought by Bodgan Markowicz, seeking damages for personal injuries sustained in a motor vehicle accident with an employee of the Department of Public Works on February 22, 2004.

## LEGAL PRINCIPLE

A public entity is responsible for the negligent acts of its employees when the acts are done in the course and scope of employment.

## SUMMARY OF FACTS

A County employee, while in the course and scope of his employment as a snow plow operator, was driving a snow plow downhill on Big Pines Highway near the intersection of Largo Vista Road, in the unincorporated County area. The snow plow was engaged in four-wheel drive and being driven at 15-20 miles per hour back to a County maintenance yard. At the time of the accident, the roadway was covered with an unknown amount of snow. As the County employee approached a curve, he saw a pick-up truck, which was driven by Bogdan Markowicz, traveling in the uphill lane. The County employee tapped his brake pedal and the rear end of the snow plow slid into the path of Mr. Markowicz's pick-up truck. While the resulting collision resulted in minor damage to the snow plow, Mr. Markowicz's pick-up truck was declared a total loss.

## DAMAGES

Mr. Markowicz claims he received soft tissue injuries to his neck, back and radiating pain and numbness into his left leg. Mr. Markowicz's diagnosis was objectively confirmed by MRI films, which revealed disc bulges in his cervical and lumbar spinal areas and an annular tear in the cervical spine. He received treatment, which included three nerve block procedures under general anesthesia, extensive physical therapy and acupuncture. Mr. Markowicz will also claim future treatment for his back injuries, which may include surgical intervention. He is claiming lost earnings based upon his hourly wage rate of nine dollars.

Should this matter proceed to trial, we anticipate Mr. Markowicz will offer evidence of damages as follows:

Past medical expenses	\$ 36,000
Future medical expenses	\$ 20,000
Past loss of earnings	\$ 6,120
Pain and suffering	<u>\$ 200,000</u>
TOTAL	<u>\$ 262,120</u>

### STATUS OF CASE

This case was mediated for a second time on May 15, 2006, at which time the parties agreed on a tentative settlement in the proposed amount. The trial date for this case was vacated to allow for action on this proposed settlement.

Approximate expenses incurred by the County in defense of this matter are attorneys' fees of \$18,377 and costs of \$9,193. These expenses include depositions of the involved parties and investigating Highway Patrol officer, consultation with a medical expert, and participation in two mediations.


### EVALUATION

This is a case of undisputed liability. The undisputed evidence is that the County employee lost control of the snow plow and that Mr. Markowicz was fault-free. Objective findings by the County's retained medical expert confirms that Mr. Markowicz received significant neck and back injuries as claimed. Also, Mr. Markowicz is claiming residual symptoms. A reasonable settlement of this action at this time, however, will avoid further litigation costs and a potential jury verdict that could exceed the proposed settlement.

### RECOMMENDATION

We join with our third party administrator, Carl Warren and Company, and our private counsel, Nishimura & Saunders, in recommending a total settlement of this matter in the amount of \$125,750. The Department of Public Works concurs in this settlement recommendation.

APPROVED:

  
RALPH L. ROSATO  
Assistant County Counsel  
General Litigation Division

RLR:ac

## **DEPARTMENT OF PUBLIC WORKS**

### **CORRECTIVE ACTION PLAN**

**LAWSUIT OF:** Bogdan Markowicz

**INCIDENT DATE:** February 22, 2004

**INCIDENT LOCATION:** Big Pines Highway e/o Largo Vista Road

#### **RISK ISSUE:**

The County of Los Angeles employee, James Samano's, failure to maintain control of his vehicle.

#### **INVESTIGATIVE REVIEW:**

On February 22, 2004, James Samano, was driving a 2004 Ford F350 Snow Plow vehicle northbound on Big Pines Hwy on icy conditions. Mr. Samano came around the turn and saw the plaintiff's truck traveling the opposite direction. Mr Samano tapped his brakes to slow down and the back-end of his truck came around and hit Mr. Markowicz's pick up. Plaintiff sustained injuries to his cervical and lumbar spine, and is claiming radiated pain into his left leg associated with numbness and tingling in his left foot and his doctor reports that these injuries will require future surgery. Mr. Samano had been operating this type of vehicle for the County for one year and two days at the time of this accident. The case is adverse to the County with no evidence of comparative fault. The case was settled at mediation for \$125,750.

#### **POLICY ISSUES:**

None.

#### **CORRECTIVE ACTION:**

Mr. Samano appeared before the Public Works Automotive Safety Committee on May 13, 2004. The committee reviewed the circumstances, evidence, and heard testimony from Mr. Samano. The committee ruled that this was a preventable accident. Therefore, disciplinary action was taken. Mr. Samano was issued a Written Warning on July 6, 2004.

Mr. Samano is a commercially licensed driver. As such he is also subject to a bi-annual rating of his driving skills by an independent evaluator. His rating previous to the accident was 84 out of a possible 100.

Public Works Employee Health and Safety Section will be requested to provide annual Fall training on the topic of Bad Weather Driving for Road Divisions 557 and 558 (where

the accident occurred) as these two crews typically encounter the most adverse driving conditions.